

ANDREA T. MARTINEZ, Acting United States Attorney (#9313)
JOHN K. MANGUM, Assistant United States Attorney (#2072)
john.mangum@usdoj.gov
111 South Main Street, #1800
Salt Lake City, Utah 84111
Telephone: (801) 524-5682

Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

RALAND J BRUNSON,
Plaintiff,

v.

ALMA S. ADAMS, et al.
Defendants.

**REPLY MEMORANDUM SUPPORTING
MOTION TO DISMISS ACTION**

Civil No. 1:21-cv-00111-JNP-JCB

District Court Judge Jill N. Parrish
Magistrate Judge Jared C. Bennett

The United States respectfully submits the following brief reply memorandum supporting the motion to dismiss this action (ECF No. 3), and in opposition to the response of Plaintiff (ECF No. 20).

Argument

I. Plaintiff Has Not Rebutted Defendant's Grounds for Dismissal

Plaintiff's response memorandum does not squarely address or properly rebut any of the multiple grounds supporting dismissal of this action spelled out in Defendants' opening motion. Those grounds were that the Court lacks jurisdiction because there was no waiver of sovereign immunity for any of the claims asserted in the complaint, Plaintiff lacks standing

to pursue his claims, which claims are also barred by absolute legislative immunity, and lack of personal jurisdiction over all members of Congress not elected from Utah, and finally that the complaint did not state a proper claim for relief. Plaintiff's opposition memorandum sidesteps all of these grounds, claiming merely that "fraud vitiates whatever it touches" and that somehow in a manner not explained the Ninth Amendment to the United States Constitution nullifies the immunity defenses of Defendants.

Plaintiff's fraud claim is not alleged or explained with any required specificity under rule 9 of the state and federal rules of civil procedure, either in the complaint or in the opposition memorandum, and is only now "supported" with four older state court opinions from other jurisdictions that are not on point as they concern disputes only between private parties. None of them involved any claim of sovereign immunity or other jurisdictional defenses like those presented here by Defendants.

Plaintiff then weakly claims that the acts of the Defendant members of Congress and Vice President Pence in accepting the electoral votes last January were only administrative acts not entitled to any immunity under the Supreme Court's opinion in *Forrester v. White*, 484 U.S. 219 (1988). But that case is also distinguishable as it dealt with an employment action of a state court judge who had claimed the protection of judicial immunity. Here, we are presented with the performance of constitutional duties of the Defendants under the Twelfth Amendment which are certainly not mere administrative acts. *Forrester* has no application here.

Finally, the claim that the Ninth Amendment nullifies the jurisdictional and immunity defenses of the Defendants lacks any legal support or even any persuasive reasoning. No

cases or other legal authority were cited to support that argument beyond reference to the Ninth Amendment itself. The Ninth Amendment's reservation of rights to the people not otherwise specified in the Constitution is fully consistent with honoring the will of the majority of the voting populace, as Defendants did in properly accepting the valid electoral cotes presented to them.

CONCLUSION

For all of the reasons noted above and in Defendants' opening motion, this action should be dismissed.

Respectfully Submitted this 23rd day of December, 2021.

ANDREA T. MARTINEZ
Acting United States Attorney

/s/ John K. Mangum
JOHN K. MANGUM
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office, and that the foregoing **REPLY MEMORANDUM** was e-filed with the Court this 23rd day of December 2021 via the Court's electronic software, and Plaintiff is being notified of this filing this same day by email to his email address below, as well as by first class mail, postage prepaid:

Raland J Brunson thedreamofthecentury@gmail.com
4287 South Harrison Blvd., Apt. #132
Ogden, Utah 84403

/s/ Amber Quintana